



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/463,024	02/15/2002	G. Ganga Raju	P00182US1	5778

7590 05/23/2005

James C Weseman
The Law Offices of James C Weseman
Suite 1600
401 West A Street
San Diego, CA 92101

EXAMINER

VANIK, DAVID L

ART UNIT	PAPER NUMBER
----------	--------------

1615

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/463,024

Applicant(s)

RAJU, G. GANGA

Examiner

David L. Vanik

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 2,11 and 16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Receipt is acknowledged of the Applicant's status letter filed on 1/15/2004.

Claim Objections

Claims 2, 11, and 16 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 2 recites the limitation "2%" sodium by weight. Claim 1, from which claim 2 depends, teaches a limitation of "approximately 14-24% by weight of sodium." 2% of sodium by weight is not in the range of "approximately 14-24% by weight of sodium." Claim 11 recites the limitation less than "1%" sodium by weight. Claim 6, from which claim 11 depends, teaches a limitation of "approximately 5-12% by weight of sodium." 1% of sodium by weight is not in the range of "approximately 5-12% by weight of sodium." Claim 16 recites the limitation "2%" sodium by weight. Claim 12, from which claim 16 is depends, teaches a limitation of "approximately 14-24% by weight of sodium." 2% of sodium by weight is not in the range of "approximately 14-24% by weight of sodium."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-11, 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3,764,692 ('692) in view of WO 98/28989 ('989).

'692 teach weight loss compositions comprising (-) hydroxycitric acid (column 1, lines 21-34 and Claims 1-12). The hydroxycitric acid-based composition (also referred to as garcinia acid) may be utilized as a salt (column 2, lines 1-8). In preferred embodiments, the hydroxycitric acid-based composition may include salts of sodium or potassium and can also include calcium or a complex of said salts (column 2, lines 1-8). According to '692, hydroxycitric acid-based compositions are useful for treating obesity

Art Unit: 1615

(column 2, lines 26-27 and Claim 1). The hydroxycitric acid-based composition can be administered via capsules, liquids, or tablets and can administered to mammals in a dosage between 1 mg/kg to about 25 mg/kg per day (column 2, lines 35-38 and column 2, lines 46-50). The hydroxycitric acid-based composition can be administered without the lactone form (Claims 1-2; Example 2; Table 3). This is because the lactone form of hydroxycitric acid is less effective at treating obesity than the sodium salt form of hydroxycitric acid (Examples 1-9 and US patent 6,447,807 B1 column 2, lines 1-6).

Although '692 teaches weight-loss compositions comprising hydroxycitric acid, sodium or potassium, and calcium, '692 does not teach the same concentrations as set forth in the instant composition.

'989 teach a food seasoning composition comprising between 0-30% calcium and 0-30 % potassium (page 2, lines 22-27). According to '989, the addition of between 0-30% calcium and 0-30 % potassium to a food product decreases obesity (page 2, lines 17-21). Since, according to '989, the combination of calcium and potassium decreases obesity, one would be motivated to add it to a weight loss composition or formula, such as the one proposed by '692. Based on the teachings of '989 and '692, it is expected that a composition comprising hydroxycitric acid, calcium, and potassium would be an effective weight loss formulation. Accordingly, one of ordinary skill in the art at the time the invention was made would have been motivated to produce a weight-loss composition comprising an effective amount of hydroxycitric acid, calcium, and potassium as suggested by the teachings of '989 and '692.

Art Unit: 1615

Claims 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3,764,692 ('692) in view of US patent 5,536,516 ('516).

The teachings of '692 are enumerated above. '692 does not teach a food product comprising hydroxycitric acid, sodium or potassium, and calcium.

'516 teach snack bars comprising hydroxycitric acid, nutrients, antioxidants, vitamins, or minerals (column 7, lines 1-10). According to '516, the concentration of hydroxycitric acid can be varied depending on the particular type of food product sought (column 7, lines 2-5). Since, as set forth in '692, a composition comprising hydroxycitric acid, sodium or potassium, and calcium, is effective at combating obesity, one skilled in the art would be motivated to incorporate hydroxycitric acid into a food product. The expected result of such a formulation is an effective weight loss food product. Accordingly, one of ordinary skill in the art at the time the invention was made would have been motivated to produce a weight-loss composition comprising a food product, such as a snack bar, and an effective amount of hydroxycitric acid to combat weight loss.

Claims 1-4, 6-9, 11-16, 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,536,516 ('516) in view of WO 98/28989 ('989).

Art Unit: 1615

As enumerated above, '516 teach snack bars comprising hydroxycitric acid, nutrients, antioxidants, vitamins, or minerals (column 7, lines 1-10). However, '516 does not teach the same concentrations as set forth in the instant composition.

According to '989, the addition of between 0-30% calcium and 0-30 % potassium to a food product decreases obesity (page 2, lines 17-21). Since, according to '989, the combination of calcium and potassium decreases obesity, one would be motivated to add it to a weight loss composition or formula, such as the one proposed by "516. Based on the teachings of '989 and '516, it is expected that a composition comprising hydroxycitric acid, calcium, and potassium would be an effective weight loss formulation. Accordingly, one of ordinary skill in the art at the time the invention was made would have been motivated to produce a weight-loss composition comprising an effective amount of hydroxycitric acid, calcium, and potassium as suggested by the teachings of '989 and '516.

Correspondence

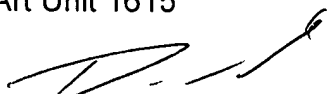
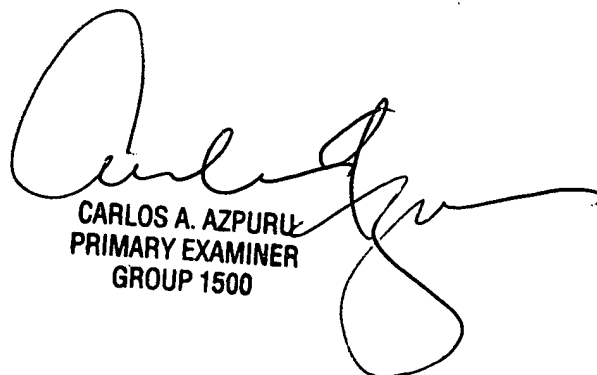
Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Vanik whose telephone number is (571) 272-3104. The examiner can normally be reached on Monday-Friday 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carlos Azpuru, can be reached at (571) 272-0588. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Art Unit: 1615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Vanik, Ph.D.
Art Unit 1615


5/16/05
CARLOS A. AZPURU
PRIMARY EXAMINER
GROUP 1500